

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

SHAYLENE FITZGERALD,

Plaintiff and Appellant,

v.

EL CAMINO HOSPITAL et al.,

Defendants and Respondents.

H032094

(Santa Clara County

Super. Ct. No. CV022999)

ORDER MODIFYING OPINION AND  
DENYING REHEARING

THE COURT:

It is ordered that the opinion filed herein on September 3, 2009, be modified as follows:

1. On page 11, after the first sentence of the second full paragraph, add as footnote 3 the following footnote, which will require renumbering of all subsequent footnotes:

<sup>3</sup> Our reference to “undergoing this type of surgical procedure under general anesthesia” should not be misunderstood to imply that the anesthesiologist must disclose the risks associated with the surgical procedure itself in addition to the risks associated with the anesthesia. We use this rubric because the anesthesia-related risks may vary based on the “type of surgical procedure” due to various factors such as the length of the procedure or the nature of the surgical positioning.

2. On page 14, replace the second sentence of the first full paragraph, which begins with the word “However,” with the following sentence:

“However, Lee’s evidence in support of his summary adjudication motion failed to establish that a reasonable person would have consented to the procedure even if she had been informed of the risk of brachial plexus injury.”

The modifications do not affect the judgment.

The rehearing petition is denied.

Date: \_\_\_\_\_

\_\_\_\_\_  
Mihara, Acting P. J.

\_\_\_\_\_  
McAdams, J.

\_\_\_\_\_  
Duffy, J.